

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 196 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? No @@@.
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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?

No

COMMISSIONER OF INCOME-TAX

Versus

DAXABEN RAMANLAL

Appearance:

MR BB NAIK with MR MANISH R BHATT for Petitioner

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.R.DAVE
Date of decision: 09/02/99

ORAL JUDGEMENT (per J.N. Bhatt, J.)

By this reference under sec. 256(1) of the Income-tax Act, 1961, the following question is referred by the Income Tax Appellate Tribunal for our opinion.

"Whether, on the facts and in the circumstances of the case, the assessee was entitled to a deduction for the amount paid to redeem the equitable mortgage on the immovable properties which were the subject of capital gains?"

2. The respondent-assessee had sold certain immovable properties and in the course of the said transaction, acquired capital gain. In computing this capital gain, the assessee claimed deduction equivalent to the net liability which had been already charged on the immovable properties which were acquired by way of gift and it was subject to equitable mortgage. This claim was not found favour with the ITO. He, therefore, disallowed the said claim, whereas, upon an appeal, the Appellate Assistant Commissioner allowed that claim, in respect of A.Y. 1973-74.

3. Therefore, the matter was taken in appeal before the Income Tax Appellate Tribunal by the Revenue and the Tribunal also held that the assessee is entitled to the deduction as claimed, while rejecting the appeal of the Revenue. That is how, at the instance of the Revenue, the aforesaid question is referred to us, by the Tribunal.

4. During the course of hearing of this matter, our attention was invited to an identical decision in a case between the same parties, reported in C.I.T. v. Daxaben Ramanlal, 197 ITR 123. After having considered our earlier decision, and the facts of the present case, the ratio propounded by us in earlier decision is squarely attracted to the facts of the present case. With the result, in our opinion, and in the light of the peculiar facts of the present case, the question is required to be answered affirmatively, that is, in favour of the assessee and against the Revenue. This reference

accordingly stands disposed of without any order of costs.

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